

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:LM:F:HAR:B:POSTF-117737-02

RMBoulanger

date: April 9, 2002

to: Joseph Piacente, Jr.
Senior Team Coordinator: LMSB 1675

from: Raymond Boulanger, Attorney
Associate Area Counsel, CC:LM:F:HAR:B

subject: [REDACTED]

**Filing Requirements & Statute of Limitations for
Short Period Return**

This memorandum is in response to your March 26, 2002 request concerning the above referenced matter. This memorandum should not be cited as precedent.

It is our position, based upon the facts presented, that we agree with the [REDACTED] statute of limitations provided by the Service Center. Therefore, in order to extend the examination beyond that date, a Form 872 will have to be entered into.

ISSUE

Whether the three-year statute of limitations under I.R.C. § 6501(a) for [REDACTED] Form 1120 short period return for [REDACTED] is [REDACTED] or [REDACTED].
U.I.L. Nos. 1502.75-00; 6501.03-02.

FACTS

[REDACTED] ([REDACTED]) was acquired by [REDACTED] ([REDACTED]) on [REDACTED]. [REDACTED] was a fiscal year taxpayer with a January 31 year end. [REDACTED] is a calendar year-end corporation.

[REDACTED] was included in [REDACTED]'s federal consolidated tax return beginning [REDACTED]. Therefore, it was necessary that [REDACTED] file a separate short period return covering the period of [REDACTED] through [REDACTED].

The Form 1120 for the [REDACTED] short period was signed on [REDACTED]. It was assigned a statute of limitations date by the [REDACTED].

Service of [REDACTED].

However, [REDACTED], in a [REDACTED] letter attached to that return, stated the following:

Under federal Internal Revenue Regulations [Reg. Section 1.1502-76(c)(1); (2)], if the group has not filed a consolidated return on or before the due date for the filing of a subsidiary corporations's separate return (including extension of time to file), the due date for filing the subsidiary corporation's separate return shall be the due date of the group consolidated return (including extensions of time to file). Since [REDACTED] maintains a calendar year-end, the due date of the group consolidated [REDACTED] return is [REDACTED], or [REDACTED] with the filing of the extension. Therefore, the ultimate extended due date for filing the [REDACTED] short period return for the period [REDACTED] through [REDACTED] is [REDACTED].

Therefore, it is [REDACTED]'s position that the [REDACTED] Form 1120 short period return was due on or before [REDACTED] did in fact file the consolidated return on [REDACTED].

In anticipation of an unagreed case, you are currently preparing a Form 872 to extend the statute on [REDACTED]'s [REDACTED] Form 1120 short period return to [REDACTED]. Although this is less than [REDACTED] months from the [REDACTED] statute set by the Service Center, this should allow you sufficient time to complete the examination.

However, if the proper statute for [REDACTED]'s short period ending [REDACTED] is [REDACTED], you will not pursue a statute extension at this time.

You seek advice as to the proper limitations date.

DISCUSSION

I. Filing Requirements

The due dates for this particular short-period return is set by the consolidated return regulations.

Any corporation whose income for any period is not properly included on a consolidated return must file a separate return for that period, unless the income is properly included on the

consolidated return filed by another affiliated group. Frelbro Corp. v. Commissioner, 36 T.C. 864 (1961), rev'd 315 F.2d 784 (2d Cir. 1963); Treas. Reg. § 1.1502-76(b)(2).

If the consolidated return is filed before the due date (including extensions and determined without regard to any change of its taxable year required under Treas. Reg. § 1.1502-76(a)) of the subsidiary's separate return for the full taxable year then the return for the short period must be filed by the due date of the consolidated return (including extensions).^{1/} Treas. Reg. § 1.1502-76(c)(1).

If the group has not filed a consolidated return by the due date of the subsidiary's separate return (including extensions and determined without regard to any change of its taxable year required under Treas. Reg. § 1.1502-76(a)), then the subsidiary must file its separate short-period return by such date. Treas. Reg. § 1.1502-76(c)(2); Rev. Rul. 56-360, 1956-2 C.B. 595.

In the situation presented, the [REDACTED] short period return was due [REDACTED], the due date for its fiscal year return. Treas. Reg. § 1.1502-76(c)(2). This return was apparently untimely filed on [REDACTED].

The [REDACTED] consolidated return was due, including extensions, on [REDACTED]. It was actually filed on [REDACTED].

II. Period of Limitations on Assessment

The three-year period of limitations on assessment is tied to the filing of a return. Section 6501(a) states that the amount of any tax must be assessed within three years after the return is filed "(whether or not such return was filed on or after the dated prescribed)."

In the instant case, [REDACTED]'s short period return was untimely filed on [REDACTED]. Therefore, the three-year period began to run from that date. Thus, we agree with the assignment by the Service Center of a [REDACTED] statute of limitation date.

^{1/} Note: The general rule that the due date for filing and paying the tax on a short-period return resulting from a change of accounting period is determined from the end of the short period does not apply to a corporation which joins in a consolidated return. Treas. Reg. § 1.443-1(a)(1).

CONCLUSION

Based on the above, the three-year statute of limitations with respect to [REDACTED]'s short period return is [REDACTED]. As such a Form 872 should be prepared and executed prior to [REDACTED], if you wish to extend the statute of [REDACTED].

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later. Please call Raymond M. Boulanger at (716) 551-5614 ext. 19 if you have any questions or require further assistance.

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By: _____
RAYMOND M. BOULANGER
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